

EXHIBIT 3

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 IN AND FOR THE DISTRICT OF DELAWARE

3 - - -

4 BEARBOX LLC and AUSTIN)
5 STORMS,)
6)
7 Plaintiffs,)
8)
9 vs.) Civil Action No.
10) 21-534-MN-CJB
11 LANCIUM LLC, MICHAEL T.)
12 MCNAMARA, and RAYMOND E.)
13 CLINE, JR.,)
14)
15 Defendants.)
16 - - -

17 Wilmington, Delaware
18 Friday, April 22, 2022
19 Motion to Strike Hearing
20 and
21 Discovery Dispute Hearing
22 - - -

23 BEFORE: HONORABLE CHRISTOPHER J. BURKE, Magistrate Judge
24 - - -

18 APPEARANCES:

19 ASHBY & GEDDES, P.A.
20 BY: ANDREW COLIN MAYO, ESQ.
21 and
22 MARSHALL GERSTEIN BORUN LLP
23 BY: BENJAMIN HORTON, ESQ., and
24 JOHN R. LABBE, ESQ.
 (Chicago, Illinois)
 Counsel for Plaintiffs

<p>1 APPEARANCES: (Continued)</p> <p>2</p> <p>3 BARNES & THORNBURG LLP</p> <p>4 BY: CHAD S.C. STOVER, ESQ.</p> <p>5 and</p> <p>6 BARNES & THORNBURG LLP</p> <p>7 ADAM KAUFMANN, ESQ.</p> <p>8 (Chicago, Illinois)</p> <p>9 and</p> <p>10 BARNES & THORNBURG LLP</p> <p>11 MARK C. NELSON, ESQ.</p> <p>12 (Dallas, Texas)</p> <p>13 Counsel for Defendants</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	Page 2	<p>1 be presenting today on behalf of Lancium.</p> <p>2 THE COURT: Okay. Great. Thank you.</p> <p>3 And I should say, for the record, Counsel,</p> <p>4 that we're here this afternoon on this teleconference for</p> <p>5 argument on two different motions: The first is</p> <p>6 defendants' motion to strike the trade secret</p> <p>7 misappropriation counts in the second amended complaint,</p> <p>8 which I believe are Counts 3 and 4, as well as a</p> <p>9 discovery dispute motion, and that is plaintiffs' motion</p> <p>10 to compel the defendants to produce documents concerning</p> <p>11 investments in certain data center facilities in Texas.</p> <p>12 I think it will make sense to first</p> <p>13 address the motion to strike, and then address the</p> <p>14 discovery dispute motion after that.</p> <p>15 And so let me turn, first, to counsel with</p> <p>16 regard to the motion to strike. And I know it's</p> <p>17 defendants' motion, so I'll turn to their counsel first.</p> <p>18 Who's going to be speaking for defendants as to this</p> <p>19 motion?</p> <p>20 MR. KAUFMANN: Good afternoon, Your Honor.</p> <p>21 This is Adam Kaufmann on behalf of defendants.</p> <p>22 THE COURT: Okay. Mr. Kaufmann, thank</p> <p>23 you.</p> <p>24 And, Mr. Kaufmann, I think, in the main,</p>
<p>1 THE COURT: Good afternoon, everybody.</p> <p>2 Just for the record, we're here this afternoon in the</p> <p>3 matter of BearBox LLC and Austin Storms versus Lancium</p> <p>4 LLC, et al., at civil action number 21-534-MN-CJB here in</p> <p>5 our court.</p> <p>6 And before we go further, let's have</p> <p>7 counsel for each side identify themselves for the record.</p> <p>8 We'll start first with counsel for the plaintiff's side,</p> <p>9 and we'll begin there with Delaware counsel.</p> <p>10 MR. MAYO: Good afternoon, Your Honor.</p> <p>11 This is Andrew Mayo from Ashby & Geddes for plaintiffs,</p> <p>12 BearBox and Mr. Storms. I am joined on the telephone</p> <p>13 this afternoon by my cocounsel from Marshall Gerstein &</p> <p>14 Borun. You have Benjamin Horton and John Labbe on the</p> <p>15 line, and Mr. Horton will be presenting the arguments on</p> <p>16 behalf of the plaintiffs today.</p> <p>17 THE COURT: All right. Thank you.</p> <p>18 And we'll do the same for counsel on</p> <p>19 defendants' side, and, again, we'll begin there with</p> <p>20 Delaware counsel.</p> <p>21 MR. STOVER: Good afternoon, Your Honor.</p> <p>22 This is Chad Stover from Barnes & Thornburg, and with me</p> <p>23 are my partners, Mark Nelson from Dallas and</p> <p>24 Adam Kaufmann from Chicago. And Mr. Kaufmann and I will</p>	Page 3	<p>1 as I understand it, the argument you're making as to why</p> <p>2 these counts should be stricken -- there's various</p> <p>3 arguments, of course. One of them is that the particular</p> <p>4 counts here weren't the type of claims that the Court</p> <p>5 specifically permitted leave to amend on, and that, as a</p> <p>6 result of that, the other side shouldn't be able to amend</p> <p>7 to add trade secret claims at this time.</p> <p>8 But I think it makes sense to focus on</p> <p>9 what I think was kind of the primary line of argument,</p> <p>10 which really goes to kind of the merits or the substance</p> <p>11 of the issue. In other words, even assuming that the</p> <p>12 plaintiffs had made a motion for leave to amend to add</p> <p>13 the new trade secret claims, there, your argument is,</p> <p>14 Look, we're past the deadline for amendment pleadings.</p> <p>15 In fact, we're well past it, and so the movement would</p> <p>16 have to show good cause.</p> <p>17 And that would turn, as an initial matter,</p> <p>18 on the diligence of the movement, and, therefore, it</p> <p>19 would be on the plaintiffs' side to explain why it is</p> <p>20 that they couldn't have added these claims any sooner.</p> <p>21 And that, in turn, leads to an argument</p> <p>22 from you as to whether or not they basically had the</p> <p>23 information relating to these claims at the time of the</p> <p>24 filing of the original complaint. And in response, the</p>

<p style="text-align: right;">Page 38</p> <p>1 which are documents that just talk about power price -- 2 performing power price arbitrage, which is something they 3 were aware that Lancium was doing based on the complaint 4 in the LayerOne case that was filed eight months before 5 this case began, which they acknowledge they were aware 6 of when it was filed. So, Your Honor, no, we're not 7 aware of what the details are.</p> <p>8 They've continued to reiterate that it's 9 the details of how the arbitrage is performed that is the 10 key, and they've never explained to us how these 11 documents provide specific details that are different 12 than -- or, you know, the concept of performing power 13 price arbitrage.</p> <p>14 THE COURT: Mr. Horton, I'll give you a 15 chance for brief rebuttal with regard to what you heard 16 from your colleague on the other side before we conclude.</p> <p>17 MR. HORTON: Yes, Your Honor. We just 18 don't agree with that. We provided these documents and 19 citation in the opposition, and maybe more importantly 20 here, we served expert reports almost three weeks ago now 21 that go through in painstaking detail what's disclosed in 22 each of those documents and how we interpret that in the 23 context of the trade secret. So saying now, three weeks 24 later, that, you know, the defendants don't know what the</p>	<p style="text-align: right;">Page 40</p> <p>1 MR. KAUFMANN: I'm sorry. This is 2 Adam Kaufmann for Lancium.</p> <p>3 THE COURT REPORTER: Thank you.</p> <p>4 THE COURT: Okay. Mr. Kaufmann, it's your 5 motion so you'll get the last word.</p> <p>6 MR. KAUFMANN: Thank you, Your Honor. I 7 appreciate that.</p> <p>8 One, Your Honor, plaintiffs' expert 9 reports came well after the briefing in these papers, and 10 so they couldn't have provided us with notice to be able 11 to respond in the papers. But, two, Your Honor, it is 12 just not the case that their expert reports explained 13 what these actual trade secrets are. These documents 14 that they point to, they have never told us what the 15 specific details of these trade secret claims are.</p> <p>16 Mr. Horton keeps reiterating that, you 17 know, high-level discussions aren't enough, but we have 18 never seen the actual explanation of what the trade 19 secret is and how these documents disclose that.</p> <p>20 THE COURT: All right. Thank you, 21 Counsel. I'm going to go ahead and -- I appreciate the 22 arguments and the parties did have fairly extensive 23 briefing on this because, not only did we have an opening 24 answer in the reply brief, but the parties agreed to</p>
<p style="text-align: right;">Page 39</p> <p>1 trade secret is or what we're talking about just doesn't 2 seem credible to me, Your Honor.</p> <p>3 And to the other point on the complaint 4 that defendants filed against LayerOne a while ago, 5 again, that was a vague high-level disclosure. It did 6 not discuss the particular method of energy value 7 arbitrage that's at issue here. And, you know, I don't 8 blame Your Honor for not remembering this if you don't, 9 but we had a dispute in this case early on about the 10 scope of the protective order. And defendants were 11 adamant about requiring an additional layer of protection 12 for its information, the way it conducts business and its 13 technology beyond what might be in the protective order 14 because it's so sensitive. So to now suggest that we 15 should have somehow been aware of the particular methods 16 they were using through public documents just doesn't 17 square with that, Your Honor.</p> <p>18 THE COURT: All right. Anything further 19 from the parties on this motion to strike?</p> <p>20 MR. KAUFMANN: Your Honor, if I could just 21 respond to that briefly. I would say, one, the assertion 22 that defendants --</p> <p>23 THE COURT REPORTER: I apologize. Who's 24 speaking? I apologize. Who's speaking? I apologize.</p>	<p style="text-align: right;">Page 41</p> <p>1 provide short surreply briefs. So I have five different 2 briefs with regard to this issue, and now I've heard 3 argument. I also know that the case is in its later 4 stages, and so I want to be able to provide you with 5 answers with regard to these disputes if I can.</p> <p>6 So with regard to this motion to strike, 7 I'm prepared to provide a ruling now, and I'll do so on 8 our teleconference, and so the substance of the Court's 9 decision will be reflected in today's transcript.</p> <p>10 And so with regard to the motion to 11 strike, I'll start by saying that the threshold issue 12 that the defendants raised was whether the amendment 13 should be permitted because -- in light of the fact that 14 the plaintiffs didn't file a motion for leave to amend. 15 They simply filed an amended complaint that included 16 these two new trade secret counts.</p> <p>17 And in response to that, the plaintiffs 18 asserted that they didn't have to file a motion for leave 19 to amend because the Court had permitted them leave to 20 amend, including leave to amend to add trade secret 21 claims like these. Now, there, I'll say, that that's not 22 correct.</p> <p>23 It's very clear from looking at the 24 Court's prior order when it resolved the prior motion to</p>

<p style="text-align: right;">Page 42</p> <p>1 dismiss that when it was recommending to the district 2 court that leave to amend should be granted, it was 3 talking about the claims that were actually dismissed 4 without prejudice in that prior motion to dismiss 5 briefing.</p> <p>6 In fact, in articulating to the district 7 court why it is that the Court should permit leave to 8 amend, the Court was referring to the substance of the 9 parties' arguments about those two claims, neither of 10 which were trade secret misappropriation claims. So it's 11 not the case that the Court intended its order to be 12 referring to any possible claims that the plaintiffs 13 might possibly want to bring later.</p> <p>14 Now, that said, all that being said, I 15 would not cite to that as a reason why the motion to 16 strike should be granted because, of course, the 17 plaintiff could have filed a separate motion for leave to 18 amend with regard to these trade secret misappropriation 19 claims. And I'm prepared to -- since I've had extensive 20 briefing here, I'm prepared to consider the plaintiffs' 21 briefs here as a de facto motion for leave because we 22 really should be addressing these squarely. So I'll 23 consider the plaintiffs' motion for leave to amend to 24 have been raised by their briefing.</p>	<p style="text-align: right;">Page 44</p> <p>1 case in terms of when these claims are seeking to be 2 added, we're not just a day or a week or a month after 3 the deadline for motions to amend has passed; we're many 4 months. We're into the late stages of the case so we're 5 long past that deadline. So the Court's search for good 6 cause kind of comes in that context as well. There 7 really needs to be good cause because these are 8 late-added claims.</p> <p>9 And with regard to the issue of good 10 cause, ultimately here -- and this is the reason I'm 11 going to grant the motion to strike -- is that the 12 plaintiff simply has not demonstrated that they had good 13 cause to move to amend only many months after the 14 deadline for amending pleadings had passed. It was 15 plaintiffs' burden to make a record in that regard. We 16 had many briefs in which to do it, and they have not. 17 And the primary reason why they have not, I'll assume for 18 purposes of my decision here, that the trade secrets that 19 are at issue in the second amended complaint in the 20 proposed trade secret counts, I'll assume that those are 21 different trade secrets than what the plaintiffs were 22 referring to in their original complaint.</p> <p>23 Now, I say that I'll assume it because 24 it's not totally clear to me. And I think the reason why</p>
<p style="text-align: right;">Page 43</p> <p>1 But with regard to that type of motion, 2 and getting back to the defendants' motion to strike, 3 there, of course, the plaintiffs have a problem, and the 4 problem is that they're making this motion four months 5 after the deadline in the scheduling order for amendment 6 of pleadings. And so because they're seeking to amend 7 their complaint as to these trade secret claims so long 8 after the motion deadline, the scheduling order deadline 9 has passed, they need to demonstrate good cause for 10 essentially amending the scheduling order to permit that.</p> <p>11 And as the parties have noted in their 12 briefing, our case law notes that the threshold issue 13 with regard to a good cause showing is that the 14 plaintiffs have to sufficiently demonstrate that they 15 were diligent in bringing their new claims. That is, 16 they have to demonstrate that, despite their own 17 diligence, they could not have raised these trade secret 18 misappropriation claims any earlier than they did here in 19 and around March of this year. And if they are able to 20 show diligence, then the Court considers other factors as 21 to that Rule 16 analysis, but diligence is the threshold 22 issue.</p> <p>23 And so before I talk about diligence, let 24 me just make this note that where we stand here in the</p>	<p style="text-align: right;">Page 45</p> <p>1 it's not totally clear to me is that, in the original 2 complaint, the plaintiff said very little, almost nothing 3 about what they were actually talking about as to the 4 trade secrets that were at issue. The plaintiffs have 5 now told me that they were referring to some type of 6 computer architecture. I don't know how you could know 7 that from looking at that original complaint, but let's 8 assume that's so. And so what the plaintiff described as 9 the more specific energy arbitrage methods that they're 10 now referring to in the second amended complaint, let's 11 assume those are different.</p> <p>12 Nevertheless, the problem, again, is these 13 claims are being raised many months after the deadline, 14 and so the plaintiff has to make a record, has to show me 15 how it is that only in, they say, December of 2021 did 16 they discover for the first time that they had a trade 17 secret misappropriation claim with regard to these trade 18 secrets.</p> <p>19 And in doing that, the plaintiffs are 20 attempting to argue that it was only through certain 21 materials that the defendants provided by way of 22 discovery at that time that they read and learned, oh, 23 we've got a trade secret misappropriation claim with 24 regard to these particular methods. But the plaintiffs</p>

<p style="text-align: right;">Page 46</p> <p>1 haven't provided any evidence that that's correct to me. 2 They haven't provided me with the documents that they 3 received in discovery that were said to have provided 4 them that notice for the first time. They haven't shown 5 me what it is about those documents that demonstrate 6 that, like what it is about the documents that indicate, 7 for example, that the same exact specific methods that 8 the plaintiffs were talking about were being used by the 9 defendants, and the documents that show me that 10 information was being provided really for the first time. 11 Now, today on our call, the plaintiffs 12 have cited to five documents that are referenced in a 13 footnote. Again, I don't have those documents in front 14 of me. I have no idea what their content is. The other 15 problem is that neither do -- the defendants didn't have 16 it in front of them. And it's not to say that defendants 17 don't know what those documents are, because obviously 18 they were produced in discovery, but the more important 19 point is the plaintiffs haven't articulated to me or the 20 defendants what are the specific portions of those 21 documents that gave them notice for the first time. 22 And the reason why that's important is 23 it's often the case that parties disagree about what the 24 documents relate to, right? So even if the plaintiffs</p>	<p style="text-align: right;">Page 48</p> <p>1 relationship to the trade secret misappropriation counts, 2 which is why it's helpful that we're addressing it 3 second. And, there, the dispute relates to the 4 plaintiffs' request that the defendants have to produce 5 documents concerning recent investments that the 6 defendants have made in building two new data center 7 facilities in Texas. 8 And more specifically, the plaintiffs have 9 argued that those documents are relevant because they're 10 relevant to a damages analysis in the case. And I think, 11 particularly, the plaintiffs have asserted that the 12 documents may be relevant to a damages analysis as it 13 relates to the plaintiffs' conversion and trade secret 14 claims. 15 Obviously, we've just discussed trade 16 secret claims, and I've ruled that those claims are not 17 in the case at this time, but the claim for conversion 18 still is. And so as part of the argument here with 19 regard to the discovery dispute, I'd like to try to get a 20 better handle on the parties' respective arguments for 21 why it is that such documents could possibly be relevant 22 to an existing claim, like conversion, or might not. I 23 know the parties have talked about that a little bit in 24 their brief, but I want to try to parse that a little bit</p>
<p style="text-align: right;">Page 47</p> <p>1 have given me the documents, they would have been 2 required to point me to the portions of the documents 3 that provided this notice. 4 If they had done that in the briefings, 5 the defendants would have the opportunity to look at that 6 argument, and they might have said, We disagree, Judge. 7 Look at the portion of the documents that the plaintiffs 8 are pointing to. That doesn't tell you anything about 9 what their claim is now. But, again, the defendants 10 couldn't do that because the plaintiffs didn't make the 11 record. And so that's why we have the briefing process 12 so that the record can be made and the arguments can be 13 set out by the parties, and it wasn't done here. 14 So, anyway, it's clear to me that I don't 15 have a sufficient record to demonstrate good cause on the 16 plaintiffs' part so I don't have a record to permit the 17 amendment and, therefore, the motion to strike, which 18 relies on the lack of good cause is well taken. 19 So I'm going to order that the motion to 20 strike be granted, and that the trade secret 21 misappropriation counts in the second amended complaint 22 be stricken in that regard. 23 Now with that said, that takes us to our 24 discovery dispute issue. And that dispute has a</p>	<p style="text-align: right;">Page 49</p> <p>1 further on our call today. 2 It's plaintiffs' motion, and let me first 3 turn to them. And who's going to be addressing this 4 issue on the plaintiffs' side? 5 MR. HORTON: Your Honor, Ben Horton. I'll 6 be discussing it. 7 THE COURT: Okay, Mr. Horton. I think 8 here, and I think in your letter, you talked about it 9 largely in the trade secret misappropriation context, but 10 my guess is probably that a claim for conversion on the 11 damages side is going to come down to having to assess 12 what's the value of the property converted. And so I 13 wonder whether the analyses are that different or if 14 they're not. 15 But, obviously, part of the issue here 16 was, okay, well, when the plaintiffs get these documents, 17 how are the plaintiffs going to try to potentially use 18 them as part of their damages case, and why might these 19 documents be relevant. And there, on page 2 of your 20 initial letter, I think you started -- you really -- 21 there was a part where you spelled out why it is that the 22 requested info is relevant to the case. And this is the 23 third sentence. You said, "Accordingly Lancium's 24 projections and investments received for the facilities</p>

<p>1 free to do so, okay? 2 All right. So with all that said, 3 Counsel, thanks for your patience today. I appreciate 4 it. I wish everybody continued health and safety. And 5 if there's nothing further, we'll end our teleconference 6 today and go off the record. I wish everyone a great 7 weekend. 8 (The hearing concluded at 4:57 p.m.) 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	Page 82
<p>1 C E R T I F I C A T E 2 3 4 I do hereby certify that the foregoing hearing was 5 taken before me, pursuant to notice, at the time and 6 place indicated; that the statements of participants were 7 correctly recorded in machine shorthand by me and 8 thereafter transcribed under my supervision with 9 computer-aided transcription; that the transcript is a 10 true record of the statements made by the participants; 11 and that I am neither of counsel nor kin to any party in 12 said action, nor interested in the outcome thereof. 13 14 WITNESS my hand and official seal this 27th day of 15 April A.D. 2022. 16  17 Notary Public 18 19 20 21 22 23 24</p>	Page 83